

**BANKRUPTCY COURT
DISTRICT OF TEXAS
H DIVISION**

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COME NOW James Dare and Mary N. Dare, Plaintiffs in this case, and respectfully submit this Motion for Summary Judgment.

1.00 INTRODUCTION AND STATEMENT OF ISSUES TO BE DECIDED

1.01 Plaintiffs filed this adversary action seeking a judgment of non-dischargeability of their judgment claims against the Defendant/Debtor. The Dare family is entitled to a judgment as a matter of law, because there are no issues of material facts for the fact-finder to resolve at trial.

1.02 Plaintiffs are entitled to judgment on the grounds of collateral estoppel based upon a judgment obtained by Plaintiffs in State District Court (Tarrant County).

2.00 STATEMENT OF UNDISPUTED MATERIAL FACTS

2.01 The Dare family obtained a default judgment against Stephen Jenkins in State District Court (Tarrant County). The Order was signed on December 16, 2016. (*Ex. 1.*)

2.02 The Judgment was a Default Judgment, was supported by evidence considered by the trial judge. (*Ex. 1.*)

2.03 The State Court lawsuit was based upon fraud. (*Ex. 2.*)

2.04 Debtor advertised a house for sale which he claimed contained an aerobic treatment on-site sewer facility. (*Ex. 2* at ¶ 5.0).

2.05 Debtor represented and advertised that the aerobic treatment facility was approximately eight (8) years old and listed a “plumbing and septic” installer who allegedly placed the system. (*Ex. 2* at ¶ 5.0).

2.06 The Dare family’s Original Petition pleaded causes of action of actual fraud, misrepresentation, non-disclosure and false promises. (*Ex. 2* at ¶¶ 6.01-6.04).

2.07 The Defendant intended that his fraudulent misrepresentations induced the Dare family into purchasing the house. (*Ex. 2* at ¶¶ 6.01-6.04).

2.08 In purchasing the home, the Dare family relied upon the representations and misrepresentations made by Debtor Jenkins, when he provided written details about the alleged aerobic facility and the alleged installer. (*Ex. 2* at ¶¶ 6.01-6.04).

2.09 The fraudulent conduct was a proximate cause and producing cause of the Dare family's damages in the amount of \$17,486.72. (*Ex. 1, Ex. 2* at ¶ 7.0).

2.10 The Court has jurisdiction to determine dischargeability of a debt pursuant to 28 U.S.C. §§ 157b(2)(I) and 28 USC 1334 and 11 USC § 523 and 11 USC § 105.

2.11 Venue is proper in this Court pursuant to 28 USC § 1409 (a).

3.00 SUMMARY JUDGMENT EVIDENCE

The following evidence is contained in an appendix, and is incorporated herein as if fully set forth at length:

Ex. 1: Final Judgment for Plaintiffs, dated December 16, 2016; (Cause No. 153-286874-16);

Ex. 2: Original Petition filed in the 153rd District Court, Tarrant County, Texas (Cause No. 153-286874-16).

4.00 BRIEFS INCORPORATED

The arguments made contained in a separate Brief in Support of Motion for Summary Judgment are incorporated herein by reference.

5.00 CONCLUSION

Plaintiffs are entitled to final summary judgment for the reasons set out in this Motion. The Defendant's fraudulent acts resulted in a judgment which is non-dischargeable.

6.00 RELIEF REQUESTED

Plaintiffs respectfully request an Order of this Court granting summary judgment of non-dischargeability. Plaintiffs also seek such other and further relief to which they may be justly entitled.

Respectfully submitted,

SOMMERMAN, MCCAFFITY &
QUESADA, L.L.P.

/s/ Sean J. McCaffity

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify by my signature above that a true and correct copy of the foregoing instrument has this date been sent to all attorneys of record in the above-styled and numbered matter, said service being effected in the following manner:

Certified Mail/Return Receipt Requested _____

Hand Delivery _____

Facsimile _____

Electronic Mail _____

Electronic Filing _____ x _____

DATED: May 18, 2018